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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/669,953	09/23/2003	Yuichi Tamaoki	00597/0200034-US0	4756
7278	7590	07/26/2007		
DARBY & DARBY P.C. P.O. BOX 770 Church Street Station New York, NY 10008-0770			EXAMINER BEISNER, WILLIAM H	
			ART UNIT 1744	PAPER NUMBER
			MAIL DATE 07/26/2007	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

Application No.

10/669,953

Applicant(s)

TAMAOKI ET AL.

Examiner

William H. Beisner

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 02 May 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-5 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-5 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### *Claim Rejections - 35 USC § 102*

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1 and 2 are rejected under 35 U.S.C. 102(b) as being anticipated by Swan et al.(US 5,090,617).

With respect to claim 1, the reference of Swan et al. discloses, a CO2 incubator (10) for incubating a culture medium accommodated in an incubation space (36) defined in a storeroom, the CO2 incubator comprising: CO2 gas concentration detection means (52, 102) for detecting a CO2 concentration in the incubation space, CO2 gas concentration setting means (82) for setting a desired CO2 gas concentration to be present in the incubation space, CO2 gas supply means (50) for supplying a CO2 gas into the incubation space, and a control means (92) for controlling the CO2 gas supply means that executes an operation of proportion, proportion and integration, or proportion and integration and differentiation on the basis of a deviation between the CO2 gas concentration in the incubation space as detected by said CO2 gas concentration detection means and the set CO2 gas concentration value set by said CO2 gas concentration setting means to calculate a CO2 gas supply time per unit time to the incubation space and a stop time, and to supply CO2 gas to the incubation space from the CO2 gas supply means in accordance with the calculated supply time and stop time (See PID controller discussed at

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column 1, lines 53-60; column 6, line 44, to column 7, line 50; and column 14, lines 49-68).

With respect to claim 2, the CO<sub>2</sub> sensor (102) is an infrared sensor.

3. Claims 1 and 2 are rejected under 35 U.S.C. 102(b) as being anticipated by Vision Scientific (CO<sub>2</sub> Incubator Model VS-9108MS).

With respect to claim 1, the reference of Vision Scientific discloses, a CO<sub>2</sub> incubator for incubating a culture medium accommodated in an incubation space defined in a storeroom, the CO<sub>2</sub> incubator comprising: CO<sub>2</sub> gas concentration detection means for detecting a CO<sub>2</sub> concentration in the incubation space, CO<sub>2</sub> gas concentration setting means for setting a desired CO<sub>2</sub> gas concentration to be present in the incubation space, CO<sub>2</sub> gas supply means for supplying a CO<sub>2</sub> gas into the incubation space, and a control means for controlling the CO<sub>2</sub> gas supply means that executes an operation of proportion, proportion and integration, or proportion and integration and differentiation on the basis of a deviation between the CO<sub>2</sub> gas concentration in the incubation space as detected by said CO<sub>2</sub> gas concentration detection means and the set CO<sub>2</sub> gas concentration value set by said CO<sub>2</sub> gas concentration setting means to calculate a CO<sub>2</sub> gas supply time per unit time to the incubation space and a stop time, and to supply CO<sub>2</sub> gas to the incubation space from the CO<sub>2</sub> gas supply means in accordance with the calculated supply time and stop time (See entire product brochure, especially the PID controller and IR sensor discussed on page 2).

With respect to claim 2, the CO<sub>2</sub> sensor is an infrared sensor.

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***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

6. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

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7. Claims 3-5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Swan et al.(US 5,090,617) or Vision Scientific (CO2 Incubator Model VS-9108MS) in view of Gross et al.(US 5,149,654).

The references of Swan et al. and Vision Scientific have been discussed above.

Claims 3-5 differ by reciting that the incubator includes a plurality of incubation spaces which can be independently controlled by the controller.

The reference of Gross et al. discloses that it is known in the incubator art to provide an incubator (29) with a plurality of incubation compartments (9).

In view of this teaching, it would have been obvious to one of ordinary skill in the art to provide the incubator devices of the primary references with individual compartments for the known and expected result of allowing the temperature of each compartment to be maintained separately with respect to another compartment. Modification of the device of the primary reference to separately control the conditions in each compartment would have been well within the purview of one having ordinary skill in the art for the known and expected result of allowing independent control of each culture compartment. Note, that mere duplication of parts has no patentable significance unless a new and unexpected result is produced (In re Harza, 274 F.2d 669, 124 USPQ 378 (CCPA 1960)).

#### ***Response to Arguments***

8. Applicant's amendments to claim 1 and related arguments, see pages 4-5 of the response, filed 5/2/07, with respect to the rejection(s) of claim(s) 1-5 under 35 USC 103 have been fully considered and are persuasive. Therefore, the rejection has been

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withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of Swan et al.(US 5,090,617) or Vision Scientific (CO2 Incubator Model VS-9108MS) alone and further in view of Gross et al.(US 5,149,654).

### ***Conclusion***

9. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to William H. Beisner whose telephone number is 571-272-1269. The examiner can normally be reached on Tues. to Fri. and alt. Mon. from 6:15am to 3:45pm.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gladys J. Corcoran can be reached on 571-272-1214. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/William H. Beisner/  
Primary Examiner  
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WHB